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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE

DRAFT REPORT ON THE WORK OF THE THIRTY-FIFTH SESSION

Addendum

C. Report of the Legal Subcommittee on the work of its thirty-first session (agenda item 8)

1. The Committee took note with appreciation of the report of the Legal Subcommittee on the work of its thirty-first session (A/AC.105/514), which contained the results of its deliberations on the items assigned to it by the General Assembly in its resolution 46/45.

1. The elaboration of draft principles relevant to the use of nuclear power sources in outer space, with the aim of finalizing the draft set of principles at the current session

2. The Committee noted that the Subcommittee, in accordance with General Assembly resolution 46/45, had continued to consider this item through its Working Group under the chairmanship of Mr. F. Cede (Austria).

3. The Committee noted the work carried out by the Subcommittee and the Working Group, as reflected in their reports (A/AC.105/514, paras. 22-28, and annex I).

4. The Committee noted that the Subcommittee had agreed that two "working non-papers" as set forth in the report of the Working Group (A/AC.105/514, annex I, paras. 18 and 19) could constitute a contribution to meeting the aim set out in General Assembly resolution 46/45 for finalizing the principles on nuclear power sources.

5. The Committee [to be added].

2. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

6. The Committee noted that the Subcommittee, in accordance with General Assembly resolution 46/45, had continued to consider this item through its Working Group under the chairmanship of Mr. E. Zawels (Argentina).

7. The Committee noted the work carried out by the Subcommittee and the Working Group, as reflected in their reports (A/AC.105/514, paras. 29-35, and annex II).

8. The Committee noted that a variety of views had been expressed on the question of the definition and delimitation of outer space. Those views were elaborated on and reiterated during the current session of the Committee.

9. Some delegations reiterated the view that the question of delimitation was part of the more comprehensive legal question of the applicability of treaties, that it was necessary to have a conventionally defined boundary between air and outer space and that the Subcommittee should continue to consider the question, with a view to establishing such a boundary. Other delegations reiterated the view that the need for such a definition or delimitation had not yet been established, that attempts to establish prematurely a boundary between air space and outer space might complicate and impede progress in the peaceful exploration and use of outer space. Still other delegations expressed the view that, in dealing with the question of delimitation, account should be taken of the characteristics of the geostationary orbit.

10. Some delegations reiterated the view that the Legal Subcommittee, in its consideration of the item, could consider international legal aspects of future use of aerospace objects. Those delegations noted the working paper on the subject submitted by the Russian Federation (A/AC.105/514, annex IV, sect. B). The Committee agreed that the approach suggested in the working paper was positive and could form a suitable basis, among others, for future discussions.

11. The Committee took note of the deliberations on the question of the geostationary orbit as contained in the report of the Legal Subcommittee. The Committee noted that an exchange of views had taken place on that subject, particularly on the basis of the ideas formulated in the "working non-paper" (A/AC.105/514, annex II, para. 24). Some delegations felt that the "working non-paper" could provide a valuable basis for further discussions. The Committee noted that the authors of the "working non-paper" would submit a revised version to the Subcommittee at its next session.

12. Some delegations reiterated the view that the geostationary orbit was part of outer space and that its legal status was subject to all provisions of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies [General Assembly resolution 2222 (XXI)] and to the appropriate rules of ITU, which had the status of a treaty.

13. Some delegations reiterated the view that the geostationary orbit, because of its particular characteristics, required a special legal regime to regulate access and utilization by all States, taking into account the needs of developing countries. The view was also expressed that such a legal regime should also take into consideration the particular situation of the equatorial countries.

14. Some delegations reiterated the view that the roles of ITU and of the Subcommittee were complementary and that the Subcommittee could contribute to the establishment of a special legal regime to regulate the use of the geostationary orbit. Other delegations reiterated the view that ITU was the appropriate body to address questions concerning the use of the geostationary orbit and was addressing those questions effectively.

15. Some delegations reiterated the view that equitable use of the geostationary orbit required a system of preferential rights, with preference in cases of competing requirements given to developing countries and countries that had not previously had access to the orbit. Other delegations felt that such preferences were inappropriate.

16. Some delegations reiterated the view that the Subcommittee might consider the question of non-functional space objects in the geostationary orbit.

17. The view was expressed that future consideration of the issue could be based on general acknowledgement of the following three principles: (a) the geostationary orbit was inseparable from outer space; (b) the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, was fully applicable to the geostationary orbit; and (c) the geostationary orbit was a unique natural phenomenon which justified the development of special legal regulations to govern its use.

18. The Committee recommended that the Legal Subcommittee continue consideration of the item at its next session.

3. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

19. The Committee noted that the Subcommittee, in accordance with General Assembly resolution 46/45, had continued to consider this item through its Working Group under the chairmanship of Mr. R. Gonzalez (Chile).

20. The Committee noted the constructive work carried out by the Subcommittee and the Working Group, as reflected in their reports (A/AC.105/514, paras. 36-43, and annex III).

21. The Committee noted that some Member States, in response to two notes verbales from the Secretary-General, had provided the Subcommittee with information relating to this agenda item (A/AC.105/C.2/15 and Add.1-13 and A/AC.105/C.2/16 and Add.1-10). In this connection, the Committee took note of a background paper (A/AC.105/C.2/L.187) prepared by the Chairman of the Working Group summarizing in an analytical manner the views and information contained in the replies of Members States to the two notes verbales of the Secretary-General.

22. Some delegations expressed the view that it was essential to elaborate legal principles which would ensure that all countries could have access to, and benefit from, outer space activities. They felt that the draft principles on the subject presented by several developing countries in working paper A/AC.105/C.2/L.182 had been carefully drafted to take into account those concerns, as well as the interests of both developed and developing countries. They believed that the debate on the basis of that paper at the last session of the Subcommittee was very interesting, useful and constructive.

23. Some delegations expressed the view that future legal principles relating to the item should address the existing inequalities between the technologically advanced space nations and the developing countries without the infrastructure, resources and technological capability to benefit from space exploration and utilization. They felt that those principles should emphasize the development of indigenous space capabilities, particularly in developing countries, as well as ensuring access to space resources and technology and the widest possible diffusion of the benefits of space activities among the peoples of the world.

24. Some delegations expressed the view that the item under discussion must be the point of departure in order to establish a new international legal framework. Other delegations expressed the view that the new item provided only for an exchange of views on the subject and did not provide a mandate for the negotiation of a new international legal framework.

25. The view was expressed that the paper of the Chairman of the Working Group (A/AC.105/C.2/L.187) was an important contribution to the work on the

item and should be discussed at the next session of the Subcommittee in order to draw conclusions from information contained in it. Other delegations expressed the view that while the document was very useful, it should be considered as one contribution within the overall framework of the consideration of the question of space benefits, together with other relevant documents, and that the discussions on working paper A/AC.105/L.182 flowed logically from the Chairman's working paper.

26. The Committee recommended that the Legal Subcommittee should continue the consideration of the item at its next session.